IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 35923 OF 2007(B)

OS.516/1999 OF PRL.SUB COURT, TRIVANDRUM

PETITIONER:

1. S.NAGARATINAM ,W/O.R.SHANMUGHAM,A2
SUMANT APARTMENT, BEEMANNA MUDALI STREET,
ALWARPET, CHENNAI-15.

2. S.BAGAVATHI, C3 JEEVAN BEEMA, NEAR
GOVERNMENT HOMEO HOSPITAL, KARAPARAMBU,
KOZHIKODE.

3. K.ANGAYARKANNI, D/O. R.A.MUTHUAWAMY
PILLAI, W/O. SRI.S.KUMARASWAMY,46-S,
TYPE-3 QUARTERS, BLOCK 12 NEYVELI, SOUTH ARCOT
6-7 803.

BY ADV. SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS

RESPONDENTS:

1. INDIAN BANK,MARAKKADA BRANCH,
THIRUVANANTHAPURAM REPRESENTED BY ITS MANAGER

2. RECOVERY OFFICER, DEBTS RECOVERY
TRIBUNAL (KERALA & LAKSHADWEEP) ERNAKULAM.

3. M/S.V.A. & CO. A REGISTERED PATNERSHIP
FRIM , TC 28/78, UPPALAM ROAD, VANCHIYOOR,
THIRUVANANTHAPURAM REPRESENTED BY ITS
MANAGING PARTNER, SRI, M.ANAVARATHAM,
S/O.R.A. MUTHUAWAMY PILLAI RESIDING AT
UPPALAM ROAD,TC 28/78,VANCHIYOOR,TVM.

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4. SMT.M.VELAMMAL, W/O.R.A.MUTHUAWAMY
PILLAI, RESIDING AT UPPALAM ROAD,
TC 28/78, VANCHIYOOR,THIRUVANANTHAPURAM

5. SRI.M.VALINAYAKAM, S/O.R.A.MUTHUAWAMY
PILLAI, RESIDING AT UPPALAM ROAD,
TC 28/78, VANCHIYOOR,THIRUVANANTHAPURAM

S.C. FOR R1 ADV. SRI. S. EASWARAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & V. K. MOHANAN, JJ.

W.P.(C) NO. 35923 OF 2007

DATED THIS, THE 6TH DAY OF DECEMBER, 2007.

J U D G M E N T

Raman, J.

Petitioners are the plaintiffs in O.S. 516/1999 pending on the file of the Principal Sub Court, Thiruvananthapuram. A preliminary decree was passed against which R.F.A. 194/2005 is filed. The contention of the petitioners is that as per the preliminary decree for partition, they had been given 3/6th right over the plaint schedule property. The plaint schedule property was earlier mortgaged by the borrowers (defendants 1 to 3) in favour of the first respondent Bank. The Bank proceeded against the borrowers and obtained a decree and the same is put in execution through the Debt Recovery Tribunal and for realisation of the decreed amount plaint schedule property is brought to sale and the sale is posted to 17.12.2007. According to the Bank, as against the borrower, there is a binding decree in which the borrowers had no contention that the property belonged to anybody else other than them. On the other hand, petitioners herein would contend that the decree will not be binding on them and their right having been declared by the court below, unless the finding of the court below is set aside by the appellate forum, the Bank is not entitled to proceed for

recovery of debts which is not due from them. They have already filed a claim petition produced as Ext.P6 in this case.

2. In view of the pendency of the R.F.A., the writ petition was directed to be posted along with that case. We find, in the factual situation, that since the claim petition itself is filed before the Recovery Officer, respective contentions of the parties will have to be adjudicated by the Recovery Officer, at the first instance. However, the apprehension of the petitioner is that without considering the claim petition, the property may be put to sale.

3. In the view we are taking, it is not necessary to issue notice to the Recovery Officer or to the borrower. However, learned standing counsel for the Bank was heard in the matter.

4. Having heard both sides, we direct the second respondent to consider Ext.P6 claim petition and dispose of the same, after hearing all concerned before which the property shall not be sold.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-